

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

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MELISSA SOLANO and CEIL STEARMAN)	
)	08 CV 3909
Plaintiffs,)	
)	Judge Joan Humphrey Lefkow
- against -)	
)	Magistrate Judge Valdez
ROLLING STONE L.L.C.,)	
)	
Defendant.)	
)	
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**DEFENDANT’S MOTION TO DISMISS PURSUANT TO RULE 12(b)(6),
OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT**

Defendant, Rolling Stone L.L.C. (“Defendant”), moves, pursuant to Fed. R. Civ. P. 12(b)(6) to dismiss the complaint of plaintiffs, Melissa Solano and Ceil Stearman’s (“Plaintiffs”) for failure to state a claim. In the alternative, Defendant moves, pursuant to Fed. R. Civ. P. 56, for summary judgment. In support of its motion, Defendant states as follows:

1. On or about May 23, 2008, Plaintiffs filed a complaint against Defendant in the Circuit Court of Cook County entitled *Melissa Solano and Ceil Stearman v. Rolling Stone L.L.C.* Case No. 08 L 5729 (“Complaint”). In the Complaint, Plaintiffs allege counts for invasion of privacy-false light and misappropriation of their rights of publicity under the Illinois Right of Publicity Act arising out of the publication of a photograph (the “Photograph”) depicting them topless and kissing a man. The photograph was published in a column in the May 31, 2007 issue of *Rolling Stone* magazine.

2. On July 9, 2008, Defendant filed a Notice of Removal with this Court to remove this matter from state court on diversity jurisdiction grounds.

3. As a procedural matter, Plaintiffs’ claims are barred by the applicable one-year statute of limitations, as Plaintiffs filed their claims more than one year after publication of the Photograph in *Rolling Stone*.

4. Even if Plaintiffs’ claims were timely, however, they have not been sufficiently alleged, and fail as a matter of law. Plaintiffs’ supposed “false light” claim fails because Plaintiffs cannot establish – nor have they specifically alleged – that Defendant’s republication

of the Photograph is “false” in any respect. Plaintiffs’ claim pursuant to Illinois Right of Publicity Act fails because Rolling Stone’s publication of the Photograph to illustrate its commentary on another website where the Photograph first appeared constituted a non-commercial use specifically exempted under the express language of the Act.

5. Finally, while Plaintiffs claim entitlement to damages “well in excess” of \$30,000, any allegation of reputational harm or mental suffering is belied by their actual touting of the fact that they appeared in *Rolling Stone* magazine. Accordingly, Plaintiffs’ complaint must be dismissed.

6. Defendant incorporates by reference its memorandum of law in support of this motion, and the declarations of Elizabeth A. McNamara, Deborah Dragon and Camp Shropshire.

WHEREFORE, Defendant, Rolling Stone, L.L.C., respectfully requests that the Court dismiss Plaintiffs’ Complaint or, in the alternative, enter summary judgment in favor of Defendant, and for any further relief the Court deems proper.

Dated: August 8, 2008

Respectfully submitted,

ROLLING STONE, L.L.C.

By: /Steven L. Baron/

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